

A preliminary injunction is warranted because Plaintiffs are likely to prevail on the merits of their First Amendment and Due Process challenges to the Ordinance and Defendant's related policies. Since Summer 2019, Defendant has effectively prohibited musicians from playing on either public or private property in The Loop by: (1) enforcing an unconstitutionally broad and vague ordinance prohibiting conduct that obstructs or "tend[s]" to obstruct public places; (2) creating a new policy that musicians playing on public sidewalks may not stand still; and (3)

requiring that musicians may play on private property adjacent to public sidewalks only with the City's permission. The ordinance and policies prohibit constitutionally protected musical expression and violate the First and Fourteenth Amendments.

First, Ordinance violates the First Amendment because it burdens substantially more speech than is necessary for Defendant to achieve a legitimate government interest. Second, this Ordinance is facially unconstitutional as it is void for vagueness in violation of the Due Process Clause of the Fourteenth Amendment because (1) it lacks a *mens rea* requirement and (2) its prohibition on conduct "tending to hinder or impede" the free passage of pedestrians or vehicles is unconstitutionally vague. Third, Defendant's Musician Non-Stationary Policy violates the First Amendment because it burdens substantially more speech than is necessary for Defendant to achieve a legitimate government interest. Specifically, the Musician Non-Stationary Policy (1) is not narrowly tailored to serve a significant government interest; and (2) fails to provide alternative channels for communication. Fourth, Defendant's Musician Non-Stationary Policy is facially unconstitutional as it is void-for-vagueness in violation of the Due Process Clause of the Fourteenth Amendment. Fifth, Defendant's Conditional Use Permit Policy violates the First and Fourteenth Amendments because it is an unconstitutional prior restraint; specifically, (1) the permit policy affords too much discretion to government officials and (2) the application process is burdensome and chills expressive activity during the application period.

A preliminary injunction is warranted because Plaintiffs are likely to succeed on the merits of their First Amendment and Due Process challenges to the Ordinance and Defendant's related policies.

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Respectfully Submitted,

s/ Lisa S. Hoppenjans  
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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing will be served upon defendant by hand delivery at the following address:

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/s/ Lisa S. Hoppenjans